THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.7646 of 2005, 13274 & 26642 of 2006 and 1908 of 2007

DATED:09-02-2007

BETWEEN

W.P.NO.7646 OF 2005

R.A. Khilji.

...PETITIONER

AND

Patan Jeelani and others.

...RESPONDENTS

W.P.No.13274 of 2006

S. Shiva Nayak.

..Petitioner.

And

The Commissioner of Police, Cyberabad Commissionerate, R.R. District and two others.

..Respondents.

W.P.No.26642 of 2006

Captain V. Ajay Bhanu.

..Petitioner.

And

The Commissioner of Police, Cyderabad and others.

..Respondents.

W.P.No.1908 of 2007

G. Adilakshmi.

..Petitioner.

And

The State of A.P., rep.by its Principal Secretary, Home Department, Secretariat, Saifabad, Hyderabad, and others.

..Respondents.

THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.7646 of 2005, 13274 & 26642 of 2006 and 1908 of 2007

COMMON ORDER:

In all these writ petitions, similar questions are involved and therefore, they are disposed of by a common order.

2. The petitioners seek a writ of mandamus to declare the action of the respondents in not registering the crime on the basis of the reports submitted by them, as illegal and arbitrary, and consequently to direct the Officer-in-charge concerned Police Stations to register the crime and investigate into the same.

3. Several contentions raised by the petitioners have been considered by this Court in a batch of writ petitions in W.P.No.21709 of 2005 and batch, dated 06.02.2007.

4. Sri O. Manohar Reddy, learned counsel appearing for the petitioner in W.P.No.26642 of 2006 relied upon a decision of the Supreme Court

in ***LALLAN CHAUDHARY v. STATE OF BIHAR*** [1] wherein it was held as under;

> "As per Section 154 Cr.P.C, a statutory duty upon police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. The mandate of Section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information. The mandate of Section 154 Cr.P.C is that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not relevant or credible. In other words, reliability, genuineness and credibility of the information are not the conditions precedent for registering a case under Section 154 of the Code".

He also relied upon another decision in ***GHANSHYAM v. STATE OF M.P*** [2] wherein it was held that on a writ petition filed against the action of the police in not registering a complaint, a learned Single Judge of the Madhya Pradesh

High Court gave a direction to the Director General of Police, Madhya Pradesh to conduct an enquiry by appointing a Senior Officer from the Police Headquarter, and subsequently, the application filed for recalling the said order was dismissed and the same was confirmed by a Division Bench of the Madhya Pradesh High Court, and assailing the said order of the Division Bench, appeal was moved before the Supreme Court, which held that writ petition is also maintainable.

5. On the other hand, Sri. V. Srinivas, learned counsel appearing for 5th respondent in W.P. No. 26642 of 2006 submits that in the judgment delivered by this Court in W.P.No.21709 of 2005 and batch dated 06.02.2007, this Court has rightly considered such contentions wherein similar issues were involved as to whether the writ petition filed seeking a direction to register a case on the complaint made by the petitioners therein is maintainable.

6. In W.P. No. 21709 of 2005 and batch, dated 6.2.2007, this Court referred to judgment of the Supreme Court in ***HARI SINGH v. STATE OF UP***[3], when information was laid with the police

no action in that behalf was taken and while dealing with Sections 154, 156, 190 read with Section 200 of the Code the Supreme Court held that when no action has been taken on the information laid with the police the complainant can under Section 190 read with Section 200 of the Code lay a complaint before the Magistrate having jurisdiction to take cognizance of the offence and the Magistrate is required to enquire into and take appropriate action under the provisions of Sections 200 to 203 of Chapter XV of the Code. The said aspects have been highlighted by the Supreme Court in ***ALL INDIA INSTITUTE OF MEDICAL SCIENCES EMPLOYEES' UNION' v. UNION OF INDIA***[4] wherein it was held that the writ petition filed seeking a writ of mandamus to police to investigate into the allegations made in the written representation cannot be entertained when there is an alternative remedy available under the Code of Civil Procedure. This Court also referred to judgment in ***GANGADHAR JANARDHAN MHATRE v. STATE OF MAHARASHTRA***[5] wherein a direct question has arisen with regard to the maintainability of

the writ petition filed seeking a direction to register the case and submit a report, the apex Court, having considering the same, held that writ application was not the proper remedy and without availing the remedy available under the Code one cannot approach the High Court by filing a writ application. The said ***GANGADHAR JANARDHAN MHATRE's case (5 supra),*** was again reconfirmed by the latest judgment of the Supreme Court in ***PRAKASH SINGH BADAL v. STATE OF PUNJAB***[6] wherein it was clarified that the obligation to register a case is not to be confused with the remedy if the same is not registered.

7. In view of the aforesaid findings arrived at by this Court in W.P.No.21709 of 2005 and batch, dated 06.02.2007, I am of the opinion that the writ petitions following the said judgment, are liable to be dismissed, and they are accordingly dismissed. No order as to costs.

V. ESWARAIAH, J

Dated: 09-02-2007

sj

[1] 2006(7) SUPREME 700

[2] 2006(2) ALD (Crl.) 888 (SC

[3] (2006) 5 SCC 733

[4] (1996) 11 SCC 582

[5] (2004) 7 SCC 768

[6] (2007) 1 SCC 1